155 FERC ¶ 61,221
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

MoGas Pipeline LLC Docket No. CP16-26-000

ORDER APPROVING ABANDONMENT AND ISSUING CERTIFICATE

(Issued June 1, 2016)

1. On November 30, 2015, MoGas Pipeline LLC (MoGas) filed an application under sections 7(b) and (c) of the Natural Gas Act (NGA) seeking: (1) abandonment authority to transfer ownership of its jurisdictional natural gas pipeline facilities to an affiliate, CorEnergy Pipeline Company, LLC (CorEnergy), and (2) certificate authority to lease the facilities back for continued operation by MoGas. In addition, MoGas seeks authorization to consolidate or combine its accounting with CorEnergy's so that MoGas's lease payments to CorEnergy will be offset by the equivalent revenue received by CorEnergy and do not impact MoGas's cost of service in any future rate case.

2. We will grant MoGas's requests for abandonment and certificate authority to sell and leaseback its facilities and, in part, its proposed accounting, subject to the condition discussed herein.

I. **Background**

3. MoGas is a limited liability company organized and existing under the laws of the State of Delaware. MoGas is a natural gas pipeline company within the meaning of NGA section 2(6)[1] that is engaged in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission.

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[1] 15 U.S.C. § 717a(6) (2012).

4. MoGas and CorEnergy both are 100 percent owned by Corridor MoGas, Inc. (Corridor MoGas), which in turn is 100 percent owned by CorEnergy Infrastructure Trust (CorEnergy Trust), a publicly traded Real Estate Investment Trust (REIT).[2]

5. MoGas's transportation system includes approximately 263 miles of pipeline, with three receipt points at interconnections with Enable Mississippi River Transmission, Panhandle Eastern Pipe Line Company, and Rockies Express Pipeline. MoGas's pipeline has the capability to provide 107,000 million British Thermal Units per day of transportation service on a firm basis and 22 delivery points in Missouri and Illinois.

II. <u>Proposed Abandonment and Leaseback of Facilities</u>

6. MoGas requests abandonment and certificate authority to transfer ownership of its jurisdictional facilities by sale to CorEnergy under their Asset Purchase Agreement[3] and immediately lease the facilities back pursuant to their Lease Agreement for continued operation by MoGas.

7. MoGas states it will maintain all of the rights, obligations, and responsibilities under its existing certificate authorizations and FERC Gas Tariff. It will continue to have complete operational control of and responsibility for the system facilities, such that CorEnergy's ownership will be passive. MoGas further states that the transaction will have no effect on its jurisdictional services or shippers.

8. Under the Lease Agreement, MoGas will pay CorEnergy monthly rent for the use of the facilities for an initial term of 20 years with an option for MoGas to extend the term of the lease in consecutive five-year increments, up to a total of 99 years. The monthly rent will include three components: base rent, participating rent, and additional rent. The base rent will be a fixed amount to be paid each calendar month, participating rent will be calculated as a percentage of MoGas's gross revenues for each calendar month, and additional rent will be "all amounts, costs, expenses, Losses, liabilities, indemnities and other monetary obligations (including Lessee's obligation to pay any interest at the Default Interest Rate hereunder) which Lessee is required to pay pursuant to the terms of this Lease, other than Base Rent or Participating Rent."

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[2] In November 2014, CorEnergy Trust acquired MoGas from Energy Investors Funds through a non-jurisdictional stock purchase.

[3] Application at Exhibit Z-1, "Asset Purchase Agreement and Lease Agreement." MoGas will retain ownership of non-jurisdictional property assets, such as trucks, buildings, etc.

9. The Lease Agreement does not provide specific dollar amounts or percentages for the calculation of monthly rent, and MoGas states the actual lease payment will be subject to negotiation.[4] Further, the Lease Agreement provides that the base rent will be adjusted every five years based on changes in the Consumer Price Index.

10. MoGas also requests approval to consolidate its accounts with CorEnergy's accounts. Under the terms of the Lease Agreement, MoGas will continue to have accounting responsibility for the pipeline as it does today and will maintain the consolidated financial records for both CorEnergy and MoGas. MoGas states because CorEnergy will passively own the jurisdictional facilities and MoGas will incur all costs (including operations and maintenance costs, and general and administrative costs), the lease cost for MoGas and the lease revenue for CorEnergy will offset each other. Therefore, MoGas states consolidating the books of both companies will yield the same results as the accounting process that MoGas currently performs. MoGas states it will use this combined approach for filing its Form 2A and for rate proceedings at the Commission.

11. MoGas states that income to its parent, Corridor MoGas, from lease payments that MoGas makes to CorEnergy, will qualify as non-taxable REIT rental income under the Internal Revenue Code if Corridor MoGas sells a majority stake in MoGas stock to an unaffiliated third party. MoGas also emphasizes, however, that the lease/leaseback structure will provide it with access to a new source of investment, resulting in a greater degree of financial flexibility and a strengthening of MoGas's financial position. MoGas believes its proposal, therefore, will enhance its ability to maintain reliable service to existing customers and enable it to develop additional gas infrastructure that will benefit natural gas and energy consumers.

III. Comments, Protests, and Request for Technical Conference

12. Public notice of MoGas's application was published in the *Federal Register*, 80 Fed. Reg. 78,218 (2015), establishing December 28, 2015 as the due date for filing comments, protests, and motions to intervene.

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[4] Application at Exhibit Z-2 n.2.

13. On December 28, 2015, the Missouri Public Service Commission (Missouri PSC) filed a notice of intervention, protest, and request to convene a Technical Conference.[5] In its protest, Missouri PSC raises a number of arguments why it believes MoGas's proposal may not be in the public interest.

14. On December 28, 2015, Laclede Gas Company (Laclede)[6] filed a timely, unopposed motion to intervene and protest.[7] In its protest, Laclede asserts that MoGas's proposal may result in unjust and unreasonable rates and therefore requests that the Commission condition any approval of MoGas's proposal to protect its shippers.

15. On January 12, 2016, MoGas filed an answer to the protests. Although the Commission's Rules of Practice and Procedure do not permit answers to protests,[8] our rules do provide that we may, for good cause, waive this provision.[9] We accept MoGas's answer to Missouri PSC's and Laclede's protests because it provided information that assisted us in our decision-making process.

16. The protests by Missouri PSC and Laclede and MoGas's answer are discussed below.

A. Request for Technical Conference

17. Missouri PSC asserts that it is unclear whether MoGas's proposed lease will benefit or harm existing customers. Missouri PSC requests that the Commission convene a technical conference to address the issues it raises in its protest.

18. All of the issues raised by Missouri PSC can be resolved on the basis of existing record, as discussed below. We therefore find that there is no need for a technical conference and will deny Missouri PSC's request.

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[5] The timely notice of intervention filed by Missouri PSC is granted by operation of Rule 214(a)(2) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(a)(2) (2015).

[6] Laclede is a firm transportation customer on MoGas's system.

[7] Laclede's timely, unopposed motion to intervene is granted by operation of Rule 214(c) of the Commission's Rules of Practice and Procedure. *See* 18 C.F.R. § 385.214(c) (2015).

[8] 18 C.F.R. § 385.213(a)(2) (2015).

[9] 18 C.F.R. § 385.101(e) (2015).

IV. Discussion

19. Since the subject facilities are used to transport natural gas in interstate commerce subject to the Commission's jurisdiction, MoGas needs abandonment authority under NGA section 7(b) to sell the facilities and certificate authority under NGA section 7(c) to lease back and continue operating the facilities.[10]

A. Certificate Policy Statement

20. The Certificate Policy Statement provides guidance for evaluating a proposal to construct new pipeline facilities to determine whether there is a need for a proposed project and whether it will serve the public interest.[11] The Commission has also applied the Certificate Policy Statement's criteria in determining whether to approve a proposed lease of existing pipeline capacity to provide jurisdictional service.[12]

21. Under the Certificate Policy Statement, the Commission balances the public benefits against the potential adverse consequences in deciding whether to authorize the construction or acquisition of pipeline facilities. The Commission's goal in evaluating proposals is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing

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[10] 15 U.S.C. §§ 717f(b), (c), and (e) (2012). Under NGA section 7(c)(1)(A), a "natural gas company" as defined by NGA section 2(6) must have a certificate in order to construct, acquire, or operate jurisdictional facilities. The Commission has long held that the concern for regulatory control is met where the operator of leased jurisdictional facilities holds a certificate. A passive owner does not become a "natural gas company" solely because of owning and leasing out the facilities. *See, e.g., Dome Pipeline Corp*., 22 FERC ¶ 61,277 (1983). Since CorEnergy will be a passive owner of facilities for which MoGas will continue to be the certificated operator, CorEnergy does not need certificate authorization.

[11] *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

[12] *See, e.g., Southern Natural Gas Company*, 124 FERC ¶ 61,058 (2008) (*Southern*) (granting abandonment authority in Ordering Paragraph (B) for Southern to sell an undivided interest in its jurisdictional pipeline facilities to Magnolia Enterprise Holdings, a subsidiary created by AGL Resources to acquire and hold property interests in interstate pipeline assets; granting certificate authority in Ordering Paragraph (B) for Southern to lease back and operate the facilities).

customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain.

22. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

23. As discussed above, MoGas states its proposal to abandon and leaseback its pipeline facilities will provide it with a greater degree of financial flexibility and strengthen its financial position, thereby enhancing its ability to maintain a reliable system for current shippers and develop new gas infrastructure that would benefit natural gas and other energy consumers. Since the proposed sale and leaseback of the existing facilities involves no new construction, it does not raise the Certificate Policy Statement's concerns with overbuilding, disruptions of the environment, and the exercise of eminent domain. However, the threshold requirement under the Certificate Policy Statement, that a pipeline must be prepared to financially support the project without relying on subsidization from its existing customers, is applicable to its proposed abandonment and leaseback of its facilities. Any other potential adverse effects on MoGas's existing services or on other pipelines and their captive customers also are relevant to our evaluation of the proposal.[13]

24. As stated above, the threshold requirement is that the applicant must be prepared to financially support the project without relying on subsidization from existing customers. Under the Lease Agreement, MoGas will continue to provide its customers the same service under its currently approved rates, terms, and conditions of services under its Commission approved tariff. As discussed below, MoGas will not be able to include any portion of its lease payments to CorEnergy or any other costs associated with the lease arrangement in its rates unless such recovery is authorized by the Commission in a future NGA section 4 rate proceeding. In the event that MoGas proposes in the future to include any costs relating to the lease agreement in its cost of service for

[13] Certificate Policy Statement, 88 FERC at 61,745.

ratemaking purposes, parties to the rate proceeding will be able to raise any objections, and MoGas will have the burden of proof to justify a proposed rate change to recover any costs associated with the lease.[14] In view of these considerations, we find that MoGas's proposal satisfies the Certificate Policy Statement's threshold requirement that the applicant be prepared to financially support the project without relying on subsidization from existing shippers. Additionally, the lease arrangement will not result in any degradation in service to existing MoGas customers or have any adverse impacts on other pipelines or their captive customers, landowners or communities.

25. In view of the proposal's lack of adverse effects and potential benefits, we find that it satisfies the Certificate Policy Statement.

B. <u>Abandonment and Certificate Authorizations</u>

26. In the instant case, MoGas is not proposing to abandon its facilities because they are underused and uneconomical. No service will be discontinued, or adversely affected as MoGas also requests certificate authority to leaseback and continue service at currently approved rates, terms, and conditions of services under the same tariff. No facilities will be constructed or removed from service; thus there are no environmental issues.

27. Under MoGas's proposal, its affiliate CorEnergy will be the passive owner of facilities while MoGas will retain the certificated authorizations and obligations to continue operation of the facilities in accordance with its service agreements and its FERC tariff. Thus, approval of the proposal will have no effect on existing services, the rates being paid by shippers under current service agreements, or MoGas's currently effective rates under its Rate Schedules. Further, as discussed below, MoGas represents that under its proposed consolidated accounting procedures its lease payments to CorEnergy will be offset by CorEnergy's lease revenue, ensuring that the lease arrangement does not impact MoGas's cost of service for ratemaking purposes in any future rate proceeding. In any event, MoGas will not be allowed to recover any of the lease payments or any other costs associated with the proposal in its rates unless such recovery is authorized in a future NGA section 4 rate proceeding where MoGas would

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[14] *See, e.g., CenterPoint Energy Gas Transmission Company*, 126 FERC ¶ 61,239 at P 14 (2009) ("Therefore, to ensure there will be no subsidization by other CenterPoint shippers, CenterPoint will not be authorized to roll the costs associated with the lease into its system rates in a future rate case unless it is able to demonstrate, at that time, that such rate treatment will not result in subsidization of the expansion capacity by existing customers.") *See also* 18 C.F.R. § 154.301(c) (2015), which requires a pipeline to submit sufficient data to sustain its burden of proof that proposed rate changes under NGA section 4 are just and reasonable.

have the burden of proof that the costs are just and reasonable and appropriate for recovery from its ratepayers.

28. In view of the above considerations, the Commission finds that MoGas's requests for authorization to abandon its facilities by sale to CorEnergy and certificate authority to leaseback and continue operating the facilities are permitted and required, respectively, by the public convenience and necessity.

29. The Commission's orders that certificated MoGas's facilities as jurisdictional facilities were conditioned on "MoGas'[s] compliance with all applicable provisions of the NGA and the Commission's regulations including, but not limited to, Part 154, Part 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the regulations."[15] MoGas's operation of the facilities under the lease agreement with CorEnergy will continue to be conditioned on MoGas's compliance with all applicable provisions of the NGA and the Commission's regulations including, but not limited to, Part 154, Part 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the regulations.

1. Missouri PSC's and Laclede's Protests

a. Adequate Information to Support a Lease Arrangement

30. Missouri PSC argues that while MoGas claims its proposal will give it a greater degree of financial flexibility and strengthen its financial position, MoGas has not provided enough information to support a finding that the lease arrangement is necessary or that it will have sufficient benefits to MoGas's shippers and gas consumers to justify approval of the proposal.[16]

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[15] *Missouri Interstate Gas, LLC*, 119 FERC ¶ 61,074, at ordering para. (K) (2007); (*Missouri Interstate*) *MoGas Pipeline LLC*, 124 FERC ¶ 61,287 at ordering para. (C) (2008) (*MoGas*). In the 2007 *Missouri Interstate* order, the Commission granted the applications by several pipeline companies, including two Hinshaw pipeline companies then subject to the Missouri PSC's jurisdiction, for Commission authorization to reorganize themselves into one NGA-jurisdictional interstate pipeline company, MoGas, the applicant in this proceeding. In addition to certificating the existing facilities, the 2007 order also granted MoGas a blanket construction certificate under Part 157, Subpart F of the regulations and a blanket transportation certificate under Part 284, Subpart G of the regulations to provide open-access services. In the 2008 *MoGas* order, the Commission granted certificate authorization for MoGas to construct and operate new compression facilities on its system.

[16] Missouri PSC's Protest at 5.

31. In response, MoGas states that its proposal is consistent with Commission precedent and that as long as its continued operation of the pipeline facilities under the lease agreement serves the objectives of the NGA and is in compliance with the Commission's regulations and policies, the motives for the sale and leaseback and transaction are not relevant.

Commission Response

32. As MoGas points out, the Commission has previously approved transactions where ownership of jurisdictional facilities was transferred to passive ownership entities and leased back to the original owner that would continue to hold the certificate authority to operate the facilities. For example, in *Equitrans, L.P.*[17] the Commission approved Equitrans' similar request to abandon facilities by sale to a newly formed affiliate that would be a non-jurisdictional, passive owner that would lease the facilities back to Equitrans. In that proceeding. Equitrans provided the same reasons as MoGas for its proposal, i.e., to "provide Equitrans with a greater degree of financial flexibility, strengthening Equitrans's financial position and benefiting Equitrans and its shippers," flexibility that would "enable Equitrans to further develop gas infrastructure, which will benefit natural gas and energy consumers across the United States, all while maintaining reliable, open- access service to its customers through its existing facilities."[18] Similarly, in *Liberty Gas Storage, LLC*,[19] the Commission approved a sale of jurisdictional facilities to a governmental entity that would be a passive owner of the facilities. Liberty's purpose was to qualify for a real estate property tax exemption which would lower its costs, putting it in a position to offer service at more competitive rates.[20]

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[17] 139 FERC ¶ 61,205 (2012) (*Equitrans*).

[18] *Id*. P 13.

[19] 117 FERC ¶ 61,224 (2006) (*Liberty*).

[20] *Id*. P 8.

33. We find that approval of MoGas's proposal to sell its jurisdictional facilities and continue to operate them under a lease agreement is consistent with Commission precedent, as described above.[21] MoGas's proposal also has similarities with other proposals approved by the Commission where the applicants requested abandonment and certificate authorizations, not to sell their facilities to a third party and lease them back, but to implement changes from their existing company or corporate status to limited liability corporate status in order to take advantage of certain tax benefits and achieve greater flexibility to raise capital.[22] While MoGas already is a limited liability corporation, its proposal is the result of its change in corporate relations and it requests abandonment and certificate authorization to sell and leaseback its jurisdictional facilities in the expectation that it benefit by gaining a greater degree of financial flexibility and stronger financial position. As explained in proceedings where the applicants requested abandonment and certificate authorizations to implement changes in their own corporate structure, so long as proposed abandonments and acquisitions "involves no change in existing facilities, services, rates or tariff provisions," the Commission does not substitute its business judgement as to "what form of business enterprise results in tax benefits or is most likely to be able to raise capital most effectively."[23] We do not agree with the Missouri PSC that we should reject MoGas's proposal because it has not demonstrated specific, quantifiable benefits from the proposed lease arrangement.

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[21] We also note that in *Equitrans*, the lease payment structure was similar to the one in MoGas's and CorEnergy's lease agreement, as it consisted of a combination of a base monthly rent plus revenues generated from the leased facilities and the monthly lease payment was not a fixed amount but the lesser of a payment based upon a cost of service composed only of plant-related costs for the leased facilities or a revenue-based payment reflecting the revenues generated by Equitrans from the operation of the leased facilities minus its operating costs. *Equitrans*, 139 FERC ¶ 61,205 at P 8. Liberty's Lease Agreement also did not establish a fixed monthly lease payment. Rather, it provided for Liberty to make monthly payments to the Development Board for Calcasieu Parish, Louisiana, in amounts sufficient for the Development Board to make payments of principal and interest due with respect to bonds issued and sold by the Development Board to a Liberty affiliate plus any payments in lieu of taxes also due.

[22] *See, e.g., Sabine Pipe Line Company*, 90 FERC ¶ 61,189, at 61,604 (2000) ("The applicants state that the proposed restructuring will allow Sabine LLC to take advantage of state and franchise tax benefits and provide Sabine LLC with greater flexibility to raise capital.").

[23] *Id.*

b. Purchase Price and Lease Payments

34. Missouri PSC states that, because MoGas did not provide the price at which CorEnergy will purchase MoGas's facilities and the amount of the negotiated lease payments that MoGas will make to CorEnergy, there is no evidence that the lease satisfies the Commission's policy for approving leases between affiliates. For example, Missouri PSC states that the proposed lease arrangement could provide for the recovery of an acquisition premium, i.e., an amount in excess of the net book value of MoGas's facilities. Missouri PSC requests that the Commission condition the order by prohibiting MoGas from recovering in a future rate case any payments resulting from its lease with CorEnergy.

35. In response, MoGas states the lease payments, as contemplated in the application, can have no impact on MoGas's rates. MoGas reiterates its representations in its application that it is not proposing any acquisition premium or adjustment, its rates will not change, and it will remain revenue neutral.[24] MoGas states that as long as it is permitted to consolidate and combine its books with CorEnergy, the proposed transaction will be revenue-neutral and have no impacts on its jurisdictional cost-of-service.

Commission Response

36. MoGas has not proposed to include an acquisition adjustment or include any other costs associated with the lease arrangement in its current jurisdictional rates, and it will not be able to include any such costs unless such recovery is authorized in a future NGA section 4 rate proceeding. As discussed above, in the event that MoGas proposes to recover an acquisition adjustment or any costs relating to its Lease Agreement with CorEnergy in a future NGA section 4 rate case, parties in the rate proceeding will have the opportunity to raise any objections, and MoGas will have the burden of proof to justify a proposed rate change to recover any costs associated with the lease.[25]

c. Unjust and Unreasonable Rates

37. As described above, the Lease Agreement provides for an initial term of 20 years with an option for MoGas to extend the term of the lease in consecutive five-year increments up to a total of 99 years. Laclede asserts there is not sufficient clarity regarding MoGas's proposal for parties to assess the potential for rate impacts of lease payments when MoGas agrees to future renewals of the Lease Agreement. Laclede also

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[24] MoGas's Answer at 12.

[25] *See, e.g.*, *CenterPoint Energy Gas Transmission Company*, 126 FERC ¶ 61,239, at P 14 (2009).

states that it is not clear how qualifying MoGas's lease payments as non-taxable REIT rental income to its parent may affect MoGas's own tax liabilities and rate of return. Laclede asserts that if the Commission approves MoGas's proposal, the approval needs to be conditioned to protect MoGas's shippers from any adverse impact associated with CorEnergy's ownership of the facilities that MoGas uses to provide its services. Therefore, if the Commission accepts MoGas's proposal, Laclede requests that MoGas be required to initiate a rate case under NGA section 4 or file a cost and revenue study.

38. In its answer, MoGas states that the Commission lacks authority to condition an authorization under NGA section 7 on a pipeline filing a rate case under NGA section 4.[26] Further, regarding Laclede's request to have MoGas file a cost and revenue study, MoGas notes that it has already filed a rate case and has submitted a subsequent cost and revenue study, making Laclede's request inappropriate and also without precedent. MoGas asserts that Laclede does not understand the benefits of the REIT structure and does not make a factual showing to support its speculation that MoGas's rates could become unjust or unreasonable due to the proposed transaction.

39. Missouri PSC also argues that MoGas's proposal to consolidate its accounting with CorEnergy's will reduce the transparency of the transactions between them and make it difficult to determine whether MoGas is attempting to include costs of the lease in its proposed cost of service in a future rate case. Missouri PSC is not convinced that MoGas's lease payments will not create a liability and cash payment obligation that it states MoGas will seek to pass through to its customers. Missouri PSC suggests that the motivations for MoGas's proposal for the sale and leaseback must be further investigated in view of its affiliation with CorEnergy. Missouri PSC states that MoGas's plan to maintain the records for both CorEnergy and MoGas and consolidate financial statements will obscure transactions between them.

40. In response, MoGas cites Commission precedent in which the sale/leaseback between affiliates using a passive ownership structure has been approved for purely financial reasons.[27] MoGas emphasizes that the Commission has not analyzed the lessor's and lessee's affiliation when approving a lease.[28] MoGas argues that because the lease will have no cost impact on ratepayers or adversely affect existing customers,

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[26] MoGas's Answer at 7 (citing *Pub. Serv. Comm'n of N.Y. v. FERC*, 866 F.2d 487, 490 (D.C. Cir. 1989) and *Panhandle Eastern Pipe Line Co. v. FERC*, 613 F.2d 1120, 1132 (D.C. Cir. 1979)).

[27] *See* MoGas's Answer at 11 (citing *Colorado Interstate Gas Co.*, 123 FERC ¶ 61,099, at P 31 (2008)).

[28] *Id*.

Missouri PSC's concerns are irrelevant and unsubstantiated. In any event, MoGas acknowledges that it would have the burden of proof to justify any proposed rate increase in an NGA section 4 proceeding and Laclede and Missouri PSC would be able to raise any objections at that time.

Commission Response

41. We will not require MoGas to submit a cost and revenue study as a condition to granting its requested authorizations.[29] While it is Commission policy when it certificates construction of a new greenfield pipeline to require that it file a cost and revenue study at the end of its first three years of service to justify the cost-based recourse rates approved in its certificate proceeding,[30] the Commission generally does not require an established pipeline company to file a cost and revenue study when new facilities are approved in a section 7 certificate proceeding unless incremental rate treatment is approved for the new facilities.[31] MoGas is an existing pipeline and it is not proposing any new facilities or rate schedules. Further, as discussed above, it will not be able to include any costs associated with the lease in its rates unless such recovery is authorized in a future section 4 rate proceeding.[32]

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[29] MoGas submitted a cost and revenue study on July 17, 2015, in Docket No. RP15-1123-000. No party filed adverse comments or protests and the cost and revenue study was accepted on August 31, 2015. *MoGas Pipeline LLC*, Docket No. RP15-1123-000 (August 31, 2015) (delegated letter order).

[30] *Florida Southeast Connection, LLC*, 154 FERC ¶ 61,080, at PP 139, 187 (2016); *DBM Pipeline, LLC*, 152 FERC ¶ 62,056 (2015); *Sierrita Gas Pipeline, LLC*, 147 FERC ¶ 61,192 (2014); *Bison Pipeline LLC*, 131 FERC ¶ 61,013, at P 29 (2010); *Ruby Pipeline, L.L.C.*, 128 FERC ¶ 61,224, at P 57 (2009).

[31] *See, e.g.*, *Discovery Gas Transmission LLC*, 145 FERC ¶ 61,145, at PP 9-10 (2013) ("Based on the circumstances underlying this case, we find there is little likelihood of over- recovery of the Mainline Extension's costs. Therefore, the Commission will grant Discovery's request for rehearing and approve its initially proposed incremental recourse rates for service. … However, in an abundance of caution, we will require Discovery to file a cost and revenue study after four years of operation of the extension justifying its incremental initial rates. The filing must include a cost and revenue study in the form specified in section 154.313 of the regulations to update cost of service data.").

[32] We agree with MoGas that we do not have authority to grant MoGas's request that we condition the grant of certificate authority for MoGas's leaseback of facilities in this section 7 proceedings on MoGas filing a section 4 rate case. *Panhandle Eastern Pipe*

(continued ...)

d. Other Concerns of Missouri PSC

42. Missouri PSC cites several instances in which it asserts MoGas's Asset Purchase Agreement and the Lease Agreement use ambiguous and contradictory language that will create confusion and conflict. Specifically, Missouri PSC takes issue with the language of the Asset Purchase Agreement that states it shall be in accordance with "New York law" (section 9.08 of the Agreement) considering the company is not located in New York. Missouri PSC asserts the Lessor-Lessee Agreement is governed by Missouri law. Missouri PSC also objects to the Purchase Agreement's provision in Section 9.08 that if it is found to be invalid or illegal, the buyer and seller will modify the Purchase Agreement, as opposed to legally reforming it, and to several sections of the Lease Agreement that contain language that is not defined or that Missouri PSC asserts is improperly or vaguely defined, contradictory, or difficult to interpret.[33]

43. MoGas claims that several of the issues Missouri PSC raises regarding the language in the draft Asset Purchase Agreement and Lease Agreement are matters of concern only between MoGas and CorEnergy, the parties negotiating the transaction. MoGas states that the Commission has not previously concerned itself with the details of agreements between the operators and owners in joint venture arrangements. However, MoGas asserts its contracts contain all terms and conditions necessary for the Commission's jurisdictional purposes and that the lease meets the definition of an

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Line Co. v. FERC, 613 F.2d 1120, 1132 (D.C. Cir. 1979). We note, however, that the Commission required MoGas to file a section 4 rate case within 18 months when it granted the applications by MoGas's predecessor pipelines to become a single jurisdictional pipeline company and allowed MoGas to begin service and charge the existing shippers of each pipeline applicant the same rates they were currently paying for service. The Commission explained in that instance that it "is of the opinion that it has authority to enforce commitments made by applicants as assertions of fact in section 7 applications. While it is true that the Commission does not have authority to require pipelines to file section 4 rate cases, we think the situation is different where an applicant undertakes to make such a filing." *Missouri Interstate Gas, LLC,* 122 FERC ¶ 61,136, at 61,709-10 (2008). MoGas complied by filing an NGA section 4 rate case in Docket No. RP09-791-000, and the Commission accepted its proposed tariff sheets, subject to refund and established hearing procedures. The Commission subsequently approved an uncontested Stipulation and Agreement of Settlement in the rate proceeding. *See Missouri Interstate Gas, LLC,* 132 FERC ¶ 61,161, at P 6 (2010).

[33] Missouri PSC Protest at 10-12 contains specific instances in which Missouri PSC seeks clarification.

"operating lease" in accordance with the Uniform System of Accounts to qualify as REIT income.

Commission Response

44. The Lease Agreement provides that MoGas will remain the operator of the jurisdictional facilities and the certificate holder for the facilities and that it will continue to provide service and operate its pipeline consistent with its currently effective FERC Gas Tariff.[34] The Lease Agreement therefore includes the necessary recognition of the Commission's jurisdiction over the subject facilities and services provided on the facilities. In any event, the Commission can and will require MoGas to operate the facilities and provide service over the facilities in accordance with its tariff provisions and Commission regulations. Further, the Commission generally is not the appropriate forum to determine which state's contract law governs an agreement or its interpretation or enforcement. We find no compelling reason here to address the specific provisions of the Lease Agreement that Missouri PSC asserts may lead to disputes in the future or to require that MoGas revise any specific provisions in the Lease Agreement.[35]

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[34] Section 3.1 of the Lease Agreement set forth provides that "[t]he Leased Property is leased to Lessee subject to … and all Applicable Legal Requirements now or hereafter in effect." Section 1.1 of the Lease Agreement defines "Applicable Legal Requirements" to "mean all statutes, ordinances, regulations, and codes of any Governmental Authority having jurisdiction that are applicable or that may become applicable to the Leased Property (or the portion thereof at issue), including Environmental Laws, DOT regulations, FERC regulations, PHMSA regulations, and zoning, operating, health, fire, safety, and building codes and regulations."

[35] As the Commission has explained (*see, e.g.*, *Questar Pipeline Company*, 140 FERC ¶ 61,040, at PP 58-60 (2012)), in situations where it has concurrent jurisdiction with the courts in cases of contract interpretation, whether to exercise primary jurisdiction is a matter solely within the Commission's discretion. Further, the Commission has established a three-part test for determining when it should assert primary jurisdiction over a contract dispute that could otherwise be subject to the jurisdiction of another forum: (1) whether the Commission possesses some special expertise which makes the case peculiarly appropriate for Commission decision; (2) whether there is a need for uniformity of interpretation of the type of question raised in the dispute; and (3) whether the case is important in relation to the regulatory responsibilities of the Commission.

The Commission does not possess special expertise to determine which state law governs MoGas's and CorEnergy's contractual agreements. Construing the contracts' provisions and inquiring into the parties' intent is a straightforward matter of contract

(continued ...)

C. Accounting

45. MoGas seeks authorization to consolidate its financial statements with CorEnergy's. Moreover, MoGas represents that if CorEnergy is sold to a third party with the result that it is no longer affiliated with Corridor MoGas, it would still be the owner of the facilities operated by MoGas. In that event, MoGas seeks authorization to combine its financial statements with CorEnergy's.[36] In support of its proposed accounting, MoGas explains that under the terms of the Lease Agreement, it will continue to have accounting responsibility for the pipeline as it does today and will maintain the financial records for itself and for CorEnergy. MoGas states that consolidating or combining the books of both companies will yield the same results as the accounting process that MoGas currently performs, as under either accounting process MoGas's lease payments to CorEnergy will be offset by CorEnergy's lease revenue and the lease arrangement therefore will not impact MoGas's cost-of-service or make a change in MoGas's ratemaking methodology necessary in the future.[37] MoGas states it will use the consolidated or combined accounting for filing its Form 2A and for any future rate proceeding.

46. Based on MoGas's representations, we will approve MoGas's request to consolidate its accounts with CorEnergy. However, to ensure that the financial data included in regulatory filings remains fully transparent, MoGas must have controls and procedures to track those accounts carried over from CorEnergy's books and ensure that such amounts are related only to the operations of the pipeline facilities operated by MoGas. Since this accounting information was not included in the exhibits filed, the Commission will require MoGas to file, within 30 days of the date of this order, its

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interpretation that is better left to a state court with appropriate jurisdiction. There is no need for uniformity of interpretation since the agreements are unique contracts between MoGas and CorEnergy and, as MoGas maintains, any interpretation of their agreements will only affect the parties to these agreements. Furthermore, while Missouri PSC asserts certain provisions and ramifications of the agreements are unclear and may lead to disputes, we have explained that they do not compromise the Commission's ability to exercise its jurisdiction over the subject jurisdictional facilities and services provided with the facilities. Therefore, we do not need to address the issues raised by Missouri PSC or exercise jurisdiction over the contracts to require revisions to the agreements.

[36] MoGas states consolidated accounting will be appropriate so long as CorEnergy and its parent, Corridor MoGas, remain affiliated but that combined accounting will become appropriate if a sale of CorEnergy results in it no longer being affiliated with Corridor MoGas. Application at 9-10.

[37] Application at 10 and Exhibit Z-2 n.2.

accounting procedures to track those accounts carried over from CorEnergy's books and ensure that such amounts are related only to the operations of the pipeline facilities operated by MoGas. Additionally, MoGas must include in the footnote disclosures of its annual FERC Form 2-A and quarterly FERC Form 3-Q the balances carried over from the books of CorEnergy. Finally, MoGas must be able to separately identify these balances and distinguish them from balances resulting from MoGas's other activities in any rate or other proceeding before the Commission where such information is required. Our approval herein only relates to the MoGas request to consolidate CorEnergy's accounts with its own. If an independent third-party acquires the stock of MoGas (i.e., MoGas is sold to a third party), the appropriate request to "combine accounts" should be filed with the Commission. The Commission will consider whether to "combine" accounts with MoGas at that time.

47. MoGas is acquiring through the Lease Agreement transmission facilities. In Exhibit Z-2 of the application, MoGas provided *pro forma* accounting treatment of the lease payments and abandonment. MoGas proposes to classify and treat the Lease Agreement with CorEnergy as an operating lease and record the monthly lease payments to Account 860, Rents.[38] MoGas's treatment of the lease and proposed accounting for the monthly lease payments is consistent with the Uniform System of Accounts.

48. MoGas's *pro forma* accounting entries recording the transfer of the pipeline facilities are not accepted. MoGas did not use Account 102, Gas Plant Purchased and Sold to record the transaction as required by Gas Plant Instruction No. 5, Gas Plant Purchased or Sold.[39] The transfer of pipeline assets must be properly recorded, consistent with the instructions to Account 102 and Gas Plant Instruction No. 5. Account 102 is used as an interim control account to record all aspects of a transaction involving the acquisition or transfer of operating units or systems. The use of this account is an important accounting control that helps ensure that acquisitions and transfers of operating units or systems are properly accounted for. MoGas has not recorded the transfer of its pipeline facilities through Account 102 in its *pro forma* journal entries. Additionally, MoGas's *pro forma* journal entries incorrectly title Account 365.1, Land and Land Rights, referring to it incorrectly as "Rights-of-Way." As a condition to this certificate, the Commission requires that MoGas account for the transfer of the pipeline facilities in accordance with Gas Plant Instruction No. 5 and Account 102 of the Uniform System of Accounts. MoGas shall submit its final accounting entries within six months of the date that the sale and leaseback is consummated, and the accounting submission must provide all the accounting entries and amounts related to the sale and leaseback along with narrative explanations describing the basis for the entries.

[38] Application at 9 and 17 and Exhibit Z-2.

[39] 18 C.F.R. pt. 201 (2015).

D. Environmental

49. Since the lease proposal requires no construction of facilities, the proposal qualifies as a categorical exclusion under section 380.4(a)(27) of the Commission's regulations and therefore no environmental assessment is required.[40]

V. Conclusion

50. The Commission on its own motion received and made part of the record in this proceeding all evidence, including the application(s), as supplemented, and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

(A) MoGas is granted authorization under NGA section 7(b) to abandon its jurisdictional facilities by sale to CorEnergy and certificate authority under NGA section 7(c) of the NGA to continue operating the jurisdictional under its Lease Agreement with CorEnergy as described and in accordance with the conditions discussed in the body of this order.

(B) MoGas shall notify the Commission of the effective date of the abandonment and lease within 10 days thereof.

(C) MoGas shall account for the lease of the facilities as directed in the body of the order.

(D) Except as provided herein, all terms and conditions of prior certificate authorizations for MoGas to operate and maintain jurisdictional facilities and provide jurisdictional services remain in effect and are unchanged.

(E) MoGas shall account for the sale and leaseback in accordance with Gas Plant Instruction No. 5 and Account 102 of the Uniform System of Accounts. MoGas shall submit its final accounting entries within six months of the date that the sale and leaseback is consummated, and the accounting submission shall provide all the accounting entries and amounts related to the sale and leaseback along with narrative explanations describing the basis for the entries.

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[40] 18 C.F.R. § 380.4(a)(27) (2015).

(F) MoGas's request to consolidate its financial statements with those of CorEnergy is granted, as discussed in the body of this order. MoGas must use sub-accounts to separately track revenues, expenses, and other pertinent accounting information related to CorEnergy that are transferred to MoGas's books and records during consolidation. MoGas's request to combine its accounts if an independent third-party acquires MoGas is denied as discussed in the body of this order.

(G) MoGas must include in the footnote disclosures of its annual FERC Form 2-A and quarterly FERC Form 3-Q the balances carried over from the books of CorEnergy.

(H) MoGas shall file its accounting procedures to track those accounts carried over from CorEnergy's books and ensure that such amounts are related only to the operations of the pipeline facilities operated by MoGas with the Commission within 30 days of the date of this order.

(I) Missouri PSC's request to convene a technical conference is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.